

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRANCE EDWARD MURRAY,

Petitioner,

v.

GIGI MATTESON,

Respondent.

No. 2:20-cv-0777 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Petitioner has paid the filing fee pursuant to 28 U.S.C. § 1914.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).¹ A waiver of exhaustion, thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

¹ A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).

1 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to
2 exhaust state court remedies. The claims have not been presented to the California Supreme
3 Court. See ECF No. 1 at 2-5 (petitioner stating he has not appealed judgment of conviction to
4 highest state court). Further, there is no allegation that state court remedies are no longer
5 available to petitioner. See generally ECF No. 1. Accordingly, the petition should be dismissed
6 without prejudice.²


7 Good cause appearing, IT IS HEREBY ORDERED that the Clerk of Court shall:

- 8 1. Randomly assign a District Court Judge to this action, and
- 9 2. Serve a copy of these findings and recommendations together with a copy of the
10 petition filed in the instant case on the Attorney General of the State of California.

11 IT IS FURTHER RECOMMENDED that petitioner's application for a writ of habeas
12 corpus be DISMISSED for failure to exhaust state remedies.

13 These findings and recommendations will be submitted to the United States District Judge
14 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
15 after being served with these findings and recommendations, petitioner may file written
16 objections with the court. The document should be captioned "Objections to Findings and
17 Recommendations." Petitioner is advised that failure to file objections within the specified time
18 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
19 Cir. 1991).

20 DATED: June 2, 2020

21 
22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
24

25 ² Petitioner is cautioned that the habeas corpus statute imposes a one-year statute of limitations
26 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period
27 will start to run on the date on which the state court judgment became final by the conclusion of
28 direct review or the expiration of time for seeking direct review, although the statute of
limitations is tolled while a properly filed application for state post-conviction or other collateral
review is pending. 28 U.S.C. § 2244(d).